



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2005

Ms. Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
333 Guadalupe, Suite 3-825
Austin, Texas 78701-3942

OR2005-04630

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 224980.

The Texas Board of Chiropractic Examiners (the "board") received a request for all files pertaining to a named chiropractor. You inform us that the board is releasing some information but claim that other requested information is excepted from disclosure under sections 552.026, 552.101, 552.114, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for

such agency or institution. *Id.* § 1232g(a)(4)(A). The board is not an educational agency or institution.

However, FERPA provides that an educational agency or institution may only transfer personal information to a third party “on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.” *Id.* § 1232g(b)(4)(B). The federal regulations provide that a third party that receives such information from an educational agency may use the information only for the purposes for which the disclosure was made. 34 C.F.R. § 99.33(a)(2).

You inform us that “[t]hese transcripts are original transcripts received directly from the educational institution (Texas Chiropractic College and San Jacinto College/Central).” Based on your representation that the board received these transcripts directly from an educational agency or institution, we find that the board may only release these transcripts on consent of the named chiropractor in accordance with sections 1232g(b)(4)(B) and 99.33(a)(2).

Section 552.101 encompasses section 11131(a) of title 42 of the United States Code. Section 11131(a) of title 42 of the United States Code, which relates to reports required to be made to the National Practitioner’s Data Bank, provides that an “entity (including an insurance company) which makes payment under a policy of insurance, self-insurance, or otherwise in settlement (or partial settlement) of, or in satisfaction of a judgment in, a medical malpractice action or claim shall report, in accordance with section 11134 of this title, information respecting the payment and circumstances thereof.” 42 U.S.C. § 11131(a). In addition, section 11137(b)(1) of title 42 of the United States Code provides:

Information reported under this subchapter is considered confidential and shall not be disclosed (other than to the physician or practitioner involved) except with respect to professional review activity, as necessary to carry out subsections (b) and (c) of section 11135 of this title (as specified in regulations by the Secretary), or in accordance with regulations of the Secretary promulgated pursuant to subsection (a) of this section. Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure. Information reported under this subchapter that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential

42 U.S.C. § 11137(b)(1). Further, section 11137(b)(2) prescribes a civil monetary penalty for a violation of section 11137(b)(1). *See* 42 U.S.C. § 11137(b)(2). Additionally, section 60.13 of title 45 of the Code of Federal Regulations provides in part:

Information reported to the Data Bank is considered confidential and shall not be disclosed outside the Department of Health and Human Services, except as specified in § 60.10, § 60.11 and § 60.14. Persons and entities which receive information from the Data Bank either directly or from another party must use it solely with respect to the purpose for which it was provided. Nothing in this paragraph shall prevent the disclosure of information by a party which is authorized under applicable State law to make such disclosure.

45 C.F.R. § 60.13(a). The submitted information includes a Medical Malpractice Payment Report that was submitted to the National Practitioner Data Bank. We understand that this report was reported by an insurance company pursuant to section 11131. You do not indicate that there is any applicable law, regulation, or exception that authorizes the release of the submitted information in this instance. Therefore, we assume that none exists. Given that assumption, we conclude that section 11131 is applicable to the information in Exhibit B which is thus confidential under section 11137 of title 42 of the United States Code and section 60.13(a) of title 45 of the Code of Federal Regulations. It must therefore be withheld pursuant to section 552.101 of the Government Code.¹

Section 552.101 also encompasses section 58.001 of the Occupations Code, which provides that:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 58.001.² Pursuant to sections 552.101 and 58.001, the board must withhold the marked social security numbers.

You contend that the information submitted as Exhibit E is confidential under section 201.206 of the Occupations Code. This section provides in part:

¹As our ruling is dispositive, we need not address your remaining arguments for this information.

²As of the date of this letter ruling, two different sections of the Occupations Code are denominated as section 58.001. The section relating to “[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession” was renumbered from section 56.001 of the Occupations Code to section 58.001 of the Occupations Code by the Act of May 20, 2003, 78th Leg., R.S., ch. 1275, § 2(112), 2003 Tex. Gen. Laws 4140, 4146.

(a) The board's investigation files are confidential, privileged, and not subject to discovery, subpoena, or any other means of legal compulsion for release other than to the board or an employee or agent of the board.

...

(d) Notwithstanding Subsection (a), the board may:

(1) disclose a complaint to the affected license holder; and

(2) provide to a complainant the license holder's response to the complaint, if providing the response is considered by the board to be necessary to investigate the complaint.

Occ. Code § 201.206(a), (d). Section 201.206 was added to the Occupations Code by the Seventy-eighth Legislature and applies to "a complaint or investigation pending on [September 1, 2003] or filed on or after that date." Act of May 29, 2003, 78th Leg., R.S., ch. 329, § 7(b), 2003 Tex. Gen. Laws 1405, 1407. The information submitted as Exhibit E consists of a notice of past due licensing renewal fees and the possible assessment of a fine related thereto. You fail to explain how this information relates to an investigation of a license holder as contemplated by section 201.206. Thus, we find that you have not shown that Exhibit E is confidential under section 201.206 of the Occupations Code, and this information may therefore not be withheld under section 552.101 of the Government Code on that basis.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the board must withhold the Texas motor vehicle record information you have marked in the submitted documents.

Finally, you note that the submitted information includes e-mail addresses. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). Therefore, in accordance with section 552.137, the board must withhold the e-mail addresses you have marked, as well as the additional information we have marked, unless the board receives consent to release this information.

In summary, in accordance with FERPA, the submitted transcripts may only be released on consent of the named chiropractor. The board must withhold the information we have marked under section 552.101 in conjunction with section 11137(b)(1) of title 42 of the United States Code. The board must withhold the marked social security numbers under section 552.101 in conjunction with section 58.001 of the Occupations Code. The board must withhold the marked information under sections 552.130, 552.136, and 552.137, unless the board receives consent to release this information. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

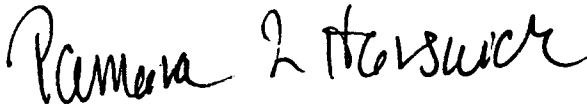
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Tamara L. Harswick". The signature is fluid and cursive, with the first name "Tamara" being more prominent.

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 224980

Enc. Submitted documents

c: Ms. Kathy Samsel
American National County Mutual
P.O. Box 3558
Springfield, Missouri 65808-3558
(w/o enclosures)